Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Relay Services	)	
And Speech-to-Speech Services for	)	CG Docket No. 03-123
Individuals with Hearing and Speech	)	
Disabilities	)	
	)	
NECA Interstate Telecommunications	)	
Relay Services Fund Payment Formula	)	
and Fund Size Estimate for the July 2007	)	
Through June 2008 Fund Year	)	

To: Secretary, FCC
For: The Commission

COMMENTS OF HAMILTON RELAY, INC.

Hamilton Relay, Inc. ("Hamilton"),[1] by its counsel, hereby submits these comments in response to the proposed payment formula for the 2007-2008 Interstate Telecommunications Relay Services ("TRS") Fund, as submitted by the TRS Fund Administrator (the "Administrator") on May 1, 2007.[2]

Hamilton welcomes the Administrator's decision to provide several alternative payment formulas to the Commission this year. This approach, Hamilton believes, is a more appropriate

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[1] Hamilton is a provider of traditional relay services, captioned telephone services, and speech-to-speech services ("STS") in fourteen states, the U.S. Virgin Islands and Saipan. In addition, Hamilton is a nationwide provider of Internet Relay and Video Relay Services ("VRS").

[2] *See Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990,* Payment Formula and Fund Size Estimate Interstate Telecommunications Relay Services (TRS) Fund for July 2007 Through June 2008, CG Docket No. 03-123 (filed May 1, 2006) ("NECA Filing"); *see also National Exchange Carrier Association (NECA) Submits the Payment Formula and Fund Size Estimate for Interstate Telecommunications Relay Services (TRS) Fund for the July 2007 Through June 2008 Fund Year,* Public Notice, CG Docket No. 03-123, DA 07-1978 (rel. May 2,2007).

role for the Administrator because it allows the Commission to examine more than one set of cost data rather than relying on one rate proposal for each TRS rate.

Nonetheless, Hamilton notes that the Administrator's report contains more than 80 pages of detailed cost data, which no doubt took a considerable amount of time for providers to generate and for the Administrator to collate and prepare for its report. No doubt too the Commission will expend considerable time and resources reviewing the material. Hamilton wishes to note that much of this process would be unnecessary if the Commission were to adopt the proposed Multistate Average Rate Structure, or "*MARS* Plan."[3] Under the MARS Plan, the rates for all forms of relay that are compensated from the Interstate TRS Fund (with the exception of VRS) would be established by a simple averaging of the competitive intrastate rates paid to TRS providers.[4] The MARS Plan would avoid the need for true-ups and the ongoing debates about whether to include marketing and outreach expenses, executive costs, research and development, overhead, lobbying costs and other expenses in the cost formulas. The MARS Plan is a simpler, better plan for calculating relay rates and should be adopted.

To the extent that the MARS Plan is adopted prior to June 30, 2007, Hamilton submits that the Commission would avoid the unnecessary waste of scarce Commission resources in analyzing the voluminous cost data submissions of every relay provider, and the Administrator's interpretations of those submissions. Accordingly, Hamilton encourages the Commission to act expeditiously and adopt the MARS Plan before the end of next month.

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3 The NECA Filing refers to the MARS Plan. NECA Filing at 7.

4 *See, e.g.*, *Telecommunications Relay Services and Speech-to-Speech Services **for** Individuals with Hearing and Speech Disabilities,* Further Notice of Proposed Rulemaking, CG Docket No. 03-123, FCC 06-106 (rel. July 20,2006).

To the extent that the Commission does not adopt the MARS Plan prior to June 30,2007, but instead adopts one of the payment formulas proposed by the Administrator, Hamilton offers the following comments.

I. Payment Proposals for the Various Forms of Relay

A. Traditional TRS

The Administrator has proposed a per minute rate of between $1.6872 and $1.8747 per minute for traditional TRS, depending on whether marketing and outreach expenses are excluded or included.[5] Hamilton is on record as opposing the exclusion of any marketing or outreach expenses because of the serious damage it would do to outreach efforts, and therefore favors the rate proposed by the Administrator that includes marketing and outreach.

However, either rate would represent a significant increase over the current traditional TRS rate of $1.291 per minute.[6] Although Hamilton does not disagree with the Administrator's calculations, Hamilton notes that the rate would be potentially significantly lower under a MARS Plan calculation, which constitutes yet another reason to adopt the MARS Plan in lieu of the Administrator's proposals.

Finally, the Administrator has recommended retaining the 51% interstate factor for toll-free and 1-900 number minutes.[7] Hamilton supports this proposal.

B. Internet Relay

The Administrator has proposed a weighted average cost per minute of $1.2849 for Internet Relay or, if labor costs reported by one provider are disallowed, a lower per minute rate

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[5] NECA Filing at 12.

[6] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Order, DA 06-1345, at 1 (CGB rel. June 29,2006).

[7] NECA Filing at 11-12.

of $1.1609.[8] Hamilton does not support the removal or significant reduction of labor costs from the calculation because labor costs are an inherent part of providing relay service in any form. Therefore, Hamilton supports the $1.2849 rate in this instance.

Nonetheless, Hamilton has demonstrated in previous filings that the costs associated with the provision of Internet Relay and traditional TRS are so close as to justify a unified rate for the two services. Hamilton continues to believe this to be the case, and therefore supports a unified rate for Internet Relay and traditional TRS, based on the MARS Plan calculation. Hamilton believes that the unified rate would be much closer to the $1.2849 rate proposed by the Administrator for Internet Relay than the Administrator's higher traditional TRS rate of $1.8747.

C. Speech-to-Speech

The Administrator has proposed a weighted average cost per minute rate of $3.4546 for STS or, if labor and relay center costs reported by one provider are disallowed, a lower per minute rate of $3.2596.' As with Internet Relay, Hamilton does not support the removal or significant reduction of labor costs or relay center costs from the calculation because such costs are an intrinsic part of providing relay service in any form. Therefore, Hamilton supports the $3.4546 rate.

The current reimbursement rate for STS is $1.409, less than half the proposed rate. As the Administrator acknowledges, there is little consumer demand for STS, with an average of 700 minutes per day.'' The limited pool of minutes and the use of a weighted average can lead to significant differences in the per minute rate each year. This is one of the reasons why Hamilton recommends that the STS rate be tied to the MARS rate, which is not subject to the

[8] *Id.* at 15-16.
[9] *Id.* at 17-18.
[10] *Id.* at 18 & n.41.

volatility inherent in a weighted average approach. Adoption of the MARS rate for STS could lead to a potentially significant reduction in the per minute rate for STS. Moreover, unifying the STS rate with the traditional TRS rate is consistent with the approach adopted by the vast majority of states. With the exception of perhaps two or three states, all states combine STS and traditional TRS minutes when calculating the intrastate relay rate.

D. VRS

The Administrator has proposed six different formula alternatives for VRS. Specifically, the Administrator proposed a rate based on: 1) projected cost and demand data submitted by providers for 2007-2008, which results in a weighted average rate of $6.7738 per minute; 2) provider projected cost and demand data for 2007-2008 minus certain cost disallowances, which results in a rate of $6.1393 per minute; 3) the actual weighted average cost per minute reported for calendar year 2006 (an approach not previously used by the Administrator), which results in a per minute rate of $4.4468, or a median actual reported cost for 2006 of $6.1813 per minute; 4) the historical cost per minute for calendar year 2006 adjusted for inflation (essentially Item #4 adjusted for inflation), which results in a per minute rate of $4.7639; 5) the rate identified in Item #1 above, but using the Administrator's demand projections instead of providers' demand projections, which results in a per minute rate of $6.3738; and 6) the rate identified in Item #1 above, but using the Administrator's demand data in Item #5 above and using the cost disallowances identified in Item #2 above, for a per minute rate of $5.7768. All of these various rates'wouldbe reduced by various amounts if the Commission were to disallow marketing and/or outreach expenses."

[11] *Id.* Exhibit 1-4a. The Administrator did not provide "unweighted" data in any form (i.e., a straightforward calculation of the sum of all VRS provider dollars divided by the number of VRS (continued...)

In sum, the Commission has been given no fewer than 24 different rates to choose from for VRS. Hamilton believes that the need for the Administrator to propose all of these different alternatives is indicative of how burdensome and, frankly, capricious, it has become to calculate the VRS rate, and how necessary it has become for a permanent VRS rate methodology to be adopted so that providers have certainty as to the VRS rate from year to year. Hamilton looks forward to reviewing the proposals of other providers to derive a transparent formula for VRS that can be implemented as the permanent VRS rate methodology.[12]

Finally, Hamilton opposes the continuing trend to remove legitimate research and development expenses from the VRS rate methodology. To the extent that research and development costs are excluded, it is likely that the barriers justifying the current waivers of various mandatory minimum standards will never be overcome, because the necessary technical solutions will be unfunded. For this reason, Hamilton continues to believe that the VRS rate formula should include reasonable costs associated with legitimate efforts designed to create technical solutions that will remove the need for waivers of the mandatory minimum standards as applied to VRS.[13]

11. Other Issues Raised in the Administrator's Filing

A. Payment Timing

The Administrator has proposed that provider payments be made on the last Friday of the month, rather than the current practice of making provider payments on the 20th workday of the

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providers). Nor did the Administrator provide the median provider estimate for 2007-2008 for VRS in its filing. Hamilton recommends that this data be disclosed for comparison purposes.

[12] As noted in previous filings, Hamilton has not proposed using the MARS rate for VRS, because there is no state equivalent to VRS.

[13] In contrast, there would be no need to determine research and development costs associated with Internet Relay if the Commission were to adopt the MARS Plan, because such costs are not determinative of the reimbursement rate under the MARS Plan.

month.[14] Hamilton supports this proposal because TRS funds should earn interest up until the day prior to distribution, which is not possible under the current distribution system. Distribution of payments on the last Friday of each month could potentially reduce waste in the TRS funding system and therefore should be the practice going forward.

B. A 1.6% Cash Working Capital Factor Is Reasonable But May Be Unnecessary

The Administrator has proposed an increase to the cash working capital factor from 1.4% to 1.6%.[15] Hamilton supports this increase because, as the Administrator notes, the 1.4% factor represents a discount to reflect minutes handled by not-for-profit entities. Such entities have largely exited the market, and therefore Hamilton believes it is no longer appropriate to discount the cash working capital factor. **A** 1.6% factor would appear to be reasonable.

However, Hamilton notes that the use of a cash working capital factor is essentially a holdover form of "rate of return" regulation, and is not desirable in a competitive market. Hamilton reiterates that *no* factor of any kind would be necessary under the **MARS** Plan because the MARS Plan is based on competitively bid rates.

C. Role of the TRS Advisory Council

Hamilton is encouraged by the Administrator's decision to recognize the important role played by the TRS Advisory Council, and to share data in a timely manner with the Council this year so that the Council could provide meaningful input into the cost formula process. Hamilton

[14] NECA Filing at 3-4.
[15] *Id.* at 5-6.

encourages the Commission to clarify the important role of the Council, an issue which was the subject of a *Notice of Proposed Rulemaking* last year.[16]

Respectfully submitted,

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[16] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG* Docket No. 03-123, FCC 06-106, ¶¶ 43-44 (rel. July 20, 2006).